

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
September 24, 2018 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Molly Barnhill, Assistant Director, and Kim Kaiser, staff.

MEMBERS ABSENT: None

MINUTES: Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the Special Meeting held August 24, 2018 and the last regular meeting held on August 27, 2018 were approved as circulated.

BZA-SU-18-14

APPLICANT: Liberty Mine, LLC by Alex Messamore, Manager Land Acquisition and Permits
OWNER: Alcoa Fuels Inc., Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, Tweedy Farms Trust.

PREMISIS AFFECTED: 2720 acres located on the South side of New Harmony Rd and 796 acres located on the South side of Millersburg Rd approximately 1 mile northwest of the intersection formed by Eskew Rd and Millersburgh Rd. Boon & Ohio Twp.

NATURE OF CASE: Applicant requests a Special Use, SU 13, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an Urban Area in a "CON" Conservancy & Recreational Area and "A" Agricultural Zoning District. *(Advertised in The Standard July 5, 2018)Continued from July 5, 2018 and August 24, 2018*

Attorney Doll stated he had received information this morning from Mr. John Henderson, the attorney representing ALCOA, one of the property owners that they had been in negotiations with. He said you would recall there is a pending lawsuit involving this potential mine site. He said the City of Boonville and a homeowners group represented by counsel; it also not only involved the property owners but it involved Liberty Mine LLC. He stated previously they asked for this application to be continued so they could enter into negotiations and try to address some of the concerns from the various parties. He said they had reported to us this morning that they had been meeting and been negotiating but they had not yet reached a resolution of those issues. He stated they believe they were making progress but they haven't yet come to a final agreement

among all of the various parties about their concerns. He said therefore they have asked, in writing, submitted electronically by an email for a continuation of this application from tonight's meeting until the meeting of October 22, 2018 at 6:00 p.m.

Chairman Valiant asked okay Board you heard Attorney Doll what are your wishes.

Mike Winge made a motion to continue the application until the next regular meeting. The motion was seconded by Mike Moesner and unanimously approved.

Attorney Doll stated that will be October 22, 2018 at the same time. He said he would say in the same room but he wasn't sure, he didn't want to make promises that he couldn't keep, we would see how the construction goes. He said anyone who was interested in Liberty Mine was welcome to be back here on that date and time.

BZA-SU-18-18

APPLICANT & OWNER: Dan Fritts Properties, Inc. by James Fritts, Member

PREMISES AFFECTED: Property located on the N end of Covert Ct. approximately 1020 feet N of the intersection formed by Covert Ct. and SR 662 Frontage Rd., lot number 2B in I-164 Commercial Park No. 2 Subdivision. Ohio Twp. 5345 Covert Ct.

NATURE OF CASE: Applicant requests a Special Use, SU 23, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick, County, IN to allow: a self-storage warehouse facility in a "C-3" Highway Commercial Zoning District with outside storage. *Continued from the August 27, 2018 meeting.*

Chris Wischer, attorney and James Fritts were present.

Chairman Valiant called for a staff report.

Mrs. Barnhill stated we were missing three green cards but we do have all of the certified mail receipts showing they were mailed correctly. She said the property was zoned "C-3" Highway Commercial with a self-storage warehouse facility. She stated the surrounding zoning and land use was to the north and east are zoned "R-1" and "R-1A" Residential with single-family dwellings. She said to the south was zoned "C-3" Highway Commercial with a self-storage warehouse storage facility and to the west was zoned "R-3" with a nursing home and "C-4" with a commercial office building. She stated there was no flood plain. She said the property had an existing commercial drive on Covert Court and this property already has storage buildings on site but every zoning district except "M-1" Light Industrial and "M-2" General Industrial requires a Special Use to be obtained for the outside storage. She stated that everything was in order.

Chairman Valiant asked Chris Wischer if he had anything to add to the staff report.

Chris Wischer stated he had a few things. He said it was straightforward. He stated he was Chris Wischer with Stoll, Keenon, and Ogden, here on behalf of the applicant Dan Fritts Properties, Inc. and James Fritts was there with him. He stated you may recall that Krista Lockyear filed this application on behalf of the applicant but she couldn't be there so she called

him and asked him to come tonight. He said so he was there tonight in somewhat of a limited representation of the applicant instead of Krista. He said as was stated the property was zoned "C-3" all over including this area that was designated for future expansion. He stated that Fritts' wanted to expand the current mini storage business into this property. He said when they applied for the special use previously that was granted for the current establishment this was shown on the site plan as future expansion but because of the additional buildings and development they thought they should come back through the special use process again and get it approved again knowing now what they intend to build. He said the reason for the special use was, he did want to have a section of this be open air storage similar to what they have on the current operation for vehicles and other things that would be stored there and cordoned off parking spaces. He stated the outside storage was what required the special use. He said what they plan is up to three additional buildings built in phases which would be approximately 200 additional units in total with an area of outside storage. He said that was the reason for the special use. He said the access stayed the same; there really was only one-way to get to this property and that was through the existing development. He stated he thought this was what was expected when the last special use was granted. He said he understood that they had been through the site review process and drainage review and that the drainage plan was approved. He stated he understood there might be some questions that may come up from neighbors about drainage but he wanted to make sure the Board was aware that the drainage plan did provide for all of the water from this development to be self-contained. He said the existing berm that was along the eastern side of the property would be extended north along the proposed expansion so that all of the water would flow south along the berm to the current retention pond. He stated there shouldn't be any water that exits this property onto the neighbors, so it shouldn't have any impact at all. He said he knew that Mr. Fritts had met with neighbors regarding the drainage issue and they had explained that and discussed that. He stated that might be something you hear tonight and he just wanted to make sure the Board understood that. He said previously this was granted as a Special Use with the new expansion and additional development. He said they had to come through the process but to some extent that decision about whether this use, this outside storage, in connection with the mini storage was a permissible use on this property or an acceptable or appropriate use has somewhat been decided and he thought what they were looking at was the proposed site plan consistent with a reasonable extension of that use onto this vacant property. He said that is really about the only use he could do that would make any sense. He stated any questions anyone may have James Fritts or himself would try to answer.

Jeff Willis stated he would be abstaining from voting because of the conflict of interest.

Chairman Valiant stated they understood.

Mike Moesner asked if the units would all be built this year.

Chris Wischer stated he thought James Fritts could answer that better but he told him they would be built in phases as needed.

James Fritts stated the current plan was to get the permit with the future development drawn on here. He said he would plan to do it in phases as money allowed. He stated what he would like

to do initially was to move his open air from behind his storage office to this section and then build some buildings onto the existing property. He stated it was really as money and market allowed.

Mike Moesner said in other words you would be converting your old buildings to enclosed buildings.

James Fritts replied no, behind his current storage office or the main office where you rent buildings they actually have open air back there. He said this was at 5340 Covert Ct. just south of this. He stated what he would like to do was to take the current open air and put some covered RV and boat storage there. He said in order to do that he had to relocate the open air first and then if he were fortunate and the market allowed then he would put buildings there on that area.

Chris Wischer stated again this Special Use is currently for open air so he cannot do step one until this was approved.

Paul Keller asked if this would complete his whole property then.

James Fritts replied yes, this would build out the whole property.

Chairman Valiant asked if there were any remonstrators for or against this project.

Tami Stein stated she lived at the northeast corner of Mr. Fritts' property, on the northeast end. She said her neighbor, Mrs. Loretta Fields, was there with her. She said her property also backed Mr. Fritts' property. She stated they had some pretty significant flooding over the last few years. She said she had lived at her residence for almost nine years and Mrs. Fields had lived at hers for 31 years. She stated before Mr. Fritts bought the property it was just a field that was used for hay and sometimes corn. She said it had always had a little bit of a creek that ran back through there, but the flooding has been much more significant since he had put in the berm on his property and a retention pond that was supposed to take this water from the creek. She stated the retention pond; she knows two years ago he said that there was some type of beaver dam that was backing it up. She said she had sent him text messages and pictures several times and Mr. Fritts replied that it was part of Vanderburgh County's problem because his pond, this was right on the Vanderburgh/Warrick County lines, so his pond flowed into...was she right James was that what you were saying.

James Fritts stated the retention pond to the south of the ditch that had backed up, there was a beaver dam.

Chairman Valiant stated they would have him come up and speak into the mic as soon as she was finished.

Tami Stein said in the past three or four years since all of this development had gone in behind their houses, especially her property was the very last property in that corner, it floods the most and then Mrs. Fields and then on down it eases up a little bit as it gets towards the retention

pond. She stated it used to not flood; she said she didn't know she wasn't an engineer but from what they could gather was the retention pond was not holding all of the water so it was flowing back up the stream. She said she had some pictures if you wanted to see what she was talking about.

Attorney Doll stated whatever pictures she gave would be kept by the Board.

Tami Stein stated she had them on her iPad.

Chairman Valiant asked if she said she was at the northeast corner of the property.

Tami Stein replied the northeast corner of his property. She said that was her main concern being here and her neighbor as well. She stated she had some arbor vitae trees she had planted along the edge of the property and several of them have drowned out and she has had to replace them. She said it was just an ongoing thing. She stated she liked Mr. Fritts and his wife, she knew them both, she didn't have any problems with them or anything like that but she just needed to know that something would be done before he goes to moving more dirt. She stated when you move dirt and pour concrete then when the water comes the water wasn't soaking into the dirt because it was concrete so it had to go somewhere and it was coming her way. She asked if they understood what she meant.

Chairman Valiant replied absolutely.

Terry Dayvolt asked if the streets flooded when that happened.

Tami Stein replied not in her area.

Terry Dayvolt asked if the water had ever got in her house.

Tami Stein replied no, but it floods her garden. She stated her property was flat.

Terry Dayvolt stated with the rains that we had...

Tami Stein replied this had been going on for several years. She said the significant flooding.

Terry Dayvolt asked what are you meaning by significant.

Tami Stein showed some pictures on her iPad.

Mike Winge asked to the top of rubber boots.

Tami Stein replied yes, just about.

Terry Dayvolt stated it gets up in the edge of your yard.

Tami Stein replied yes it comes in four or five feet.

A gentleman stated the water gets probably within 15 to 20 feet from the house.

Chairman Valiant told him he needed to come to the microphone and state his name.

Tami Stein stated he was her other half.

Kevin Blockner stated the garden they had planted in the back yard gets flooded out pretty well every year because you have the spring rains that come in. He said it used to not flood but since he had built that barrier back there, the water doesn't free flow into the field anymore. He said it was kind of trapped so it just backs up, just like you put a dam up. He stated when it comes a pretty hard rain they have a nice permanent lake back there. He said there needed to be a way to get rid of the water. He stated years ago it just traveled through the fields and went on but now it was contained just like if you put a levy up. He said he didn't know what the answer was if it was a storm sewer drain to get it out because that little ditch would not contain all of the water. He said the water just keeps spreading out.

Mike Moesner asked how long it took the water to totally leave after it quit raining. He said one day, two day, or what.

Tami Stein and Kevin Blockner both replied a couple of days.

Kevin Blockner stated if you had rain like now or you had a flash flood it would just stay there. He said you couldn't do anything. He stated your aren't going to mow, walk back there, or you aren't even going to see the garden. He said it just pretty well destroys that. He stated anything you plant back there it just drowns it out, it is an issue that doesn't bother Mr. Fritts because he put a berm up to save a lot of his property but he was backing that water up on residents. He said it used to have a place to go but it has no place to go now but that little ditch. He stated you know as well as he does that it wasn't a Pigeon Creek ditch it was just a little backhoe dug out ravine. He said it was a problem but it could be taken care of he thought if somebody knew what they were doing and new how to measure how much water was coming off his property and how to get rid of it. He said engineers do it all day long.

Tami Stein stated the berm ends and Mrs. Fields property and hers was right next door. She said when Mr. Fritts came and talked to them about six or seven years ago when he bought the property and wanted to do that she asked him not to put the berm up there because (A) she was afraid the most significant thing was it would wash over onto their side. She said she couldn't imagine if you put a berm up there now what it would do to her property. She stated we don't have the berm there it stops at her house.

Loretta Fields stated she lived at 10911 Williamsburgh Ct. She stated she lived next door to Mrs. Stein and had lived in her home for 31 years. She said she had never seen this type of flooding take place. She stated she was a widow, she had been with Evansville School Corporation for 44 years, and was looking forward to retiring. She said she had no plans at this late stage of her life to have to go and find a new home. She stated this flooding was atrocious. She said she really

appreciated the attorney coming up this evening and talking about what should not take place but please keep in mind the operative word wasn't should not take place but she was telling them that evening based on what already was there it was taking place and it was very atrocious. She said she had looked forward for many years to sit in her backyard when she retired next year, and enjoy her backyard but the way it was going now with all of this flooding getting closer and closer to her house. She said who would even buy her house, who would buy her property, how could she enjoy her property now. She said therefore let's don't go all what should not take place let's go about we want to take place and what would take place. She said thank you so very much but this was atrocious.

Chris Wischer said he would let James explain to the Board the drainage not doubting at all that they were having drainage issues out there but it doesn't appear to Mr. Fritts or his engineers that this development was a contributing factor to that. He said there was water coming down from the subdivisions, the ditch was on the east side of the berm and he knew it was sometimes cluttered with debris from wherever but not from this property. He stated that James would explain the drainage issue to the Board. He said it has been through the Drainage Board, engineers had presented a drainage plan that had been reviewed and approved for this new expansion.

James Fritts stated what they had right now was two different pathways for water. He said the pathway of the water that comes from his property runs on the west side of the berm to the retention lake, which has never backed up. He said the one she was referencing earlier was when there was a beaver dam in the ditch it had backed up the retention pond to the south but Warrick County actually addressed that for him probably five or six years ago, he didn't remember the exact date. He said there was also water that flowed on the east side of the berm, that right there was a very slow flow meaning it was very narrow just a little trench on the one side of the berm. He stated he walked out there with Tami and there are a few high spots down through there. He said since it doesn't flow fast people had been throwing their grass clippings and things like that in it. He stated they had to clean it out several times. He said there were some things he had agreed to do like take out the high spots to get the water to flow better. He stated he had also talked to his engineer about taking the swell that is on the west side of that berm all of the way up to the corner to divert the water that comes off of the subdivision from the little swell on the east side of the berm to his retention lake. He stated he had extended that offer as well.

Chris Wischer stated the proposed expansion wouldn't contribute any additional water to the existing issue. He said Mr. Fritts was working with some things that he could do there to help alleviate that to some extent. He stated he wanted to remind them as far as what would be decided there was the Special Use for outdoor storage. He said the "C-4" allowed the building of the buildings and they could do that with the drainage plan they had submitted with building permits etc. so they had a somewhat limited issue. He said he didn't think this development, as had been found by the drainage plan that had been approved, would contribute to the existing situation that was there now. He stated any additional questions about that he knew Mr. Fritts could address.

Mike Moesner asked if the Drainage Board was aware of the flooding that these ladies were talking about.

Chris Wischer stated he hadn't been involved in that.

James Fritts stated it did not come up in the Drainage Board meeting sir.

Chris Wischer stated they did have to show with the drainage plans that the building of the buildings etc. wouldn't allow water to go off of the property any more than what it does currently. He said what Mr. Fritts explained to him when you extend the berm to the north that would actually capture some of the water on the vacant property that might now spill into the that ditch would now be directed down into the retention pond. He stated it might actually release less water onto the property. He said but again he wasn't an engineer and wasn't involved in that process.

Terry Dayvolt asked where the bulk of the water came from. He asked if it came from Mr. Fritts' property or the subdivision.

James Fritts stated the bulk of the water that was seen in the pictures actually came from the subdivision. He said currently the way the drainage was set up on the property where the water piled up there was actually a little rise in the property that diverts the water from his to the retention pond. He stated the water that you saw came from the subdivision to the north and it was a slow flow down the east side of the berm so if anybody threw anything over their fence back into that area, grass clippings or you get a high spot then it would slow the water up and allow it to pool.

Terry Dayvolt stated the berm that you put up stopped the flow from the subdivision going into the drainage ditch that you put in.

James Fritts stated the retention lake wasn't there prior so where the water went prior he couldn't really tell you. He said yes some of it would have left by the field but there wasn't a natural swell or little trench that went down in the area that it was currently at right now. He stated they did nothing to change that. He said obviously, when you first start water flows and then you get a couple of high spots in there and that allows it to pool up on the north end. He stated there was a low spot where she had her arbor trees you could visually see it. He said it was six inches lower than other areas but he didn't get over into her property cutting ground during that time.

Terry Dayvolt stated so you didn't cut the swell between her property and your property.

James Fritts stated whenever they put the berm in the little swale or trench that runs on the east side of it, they did go in and put that back in. He said there was already one existing and they cleaned it up, took out a bunch of tree roots and limbs, and things like that all of the way down through there. He said they seeded and strawed it.

Paul Keller asked if the swale was on the subdivision or Mr. Fritts.

James Fritts replied that it was on his property.

Paul Keller said the swale was on his property.

Terry Dayvolt said the berm was on his property.

James Fritts replied the berm, the little trench on the east side, and the swale on the west side of the berm was on his property. He said there was a 60' berm easement or landscaping easement that he couldn't build on but all of it was on his property.

Terry Dayvolt stated so you have a 60' easement around all of the property.

James Fritts replied just on the east side of it. He stated there was a sewer that ran through there as well.

Chairman Valiant stated you could see he was 60' away from the property line on the east side.

Terry Dayvolt asked what his dimension of being away from the property line was on the north side.

James Fritts stated what he thought was on there was 15' by memory.

Terry Dayvolt stated 15' was so small he couldn't see it.

James Fritts stated he would need his bifocals.

Terry Dayvolt asked if there was a swale in that 15'.

James Fritts stated there was a berm with cutouts through there so if any water came off the subdivision it would allow some to come onto his property currently. He said there would be no change in that.

Terry Dayvolt said what he was asking was if there was a swale.

James Fritts replied no, there was not a swale. He said there was a natural grade and the water runs from the west to east. He said it ran down towards the northeast corner of the property where Tami's property meets his.

Terry Dayvolt stated ma'am he had a question for her. He asked you say you are on the northeast corner.

Tami Stein replied yes sir.

Terry Dayvolt said the very northeast corner.

Tami Stein replied yes sir.

Terry Dayvolt stated so the 60' easement backs up to you.

Tami Stein showed them where her property was on a map that was included in the application.

Terry Dayvolt asked Mr. Fritts if he had disturbed the 60' right-of-way.

James Fritts stated yes, he was required to put a landscape berm in there.

Terry Dayvolt asked how tall the berm was.

James Fritts replied probably about four foot.

Terry Dayvolt asked how the water got away from the berm as it came out of the subdivision.

James Fritts stated there was a path the water takes on the east side and then there is his swale that goes to the retention lake on the west side. He said the waterway on the east isn't as much of a swale because there wasn't as much water that came of the subdivision.

Terry Dayvolt stated that is not on your property.

James Fritts replied it was on his property. He said somewhere as you travel south it may cross over a little but it was mostly on his property.

Paul Keller asked if the berm ran the whole 60'.

James Fritts stated the 60' is from west to east.

Attorney Doll stated the 60' was the width.

Paul Keller said sorry, does the berm run the whole length.

James Fritts replied no, it ran down to the southern portion where the ditch was but Tami asked him not to put it up where her property was.

Paul Keller stated so you didn't.

James Fritts stated he worked with her.

Mike Moesner asked how far it was from where the water was collecting on his property to where if you put a drain in you would be able to collect and catch it.

James Fritts stated what they had talked about was he was going to run the swale, that is currently on the west side of the property, up to the northeast corner that way all of the water that comes off of that runs down to the retention lake. He said Glen Merrit, with Cash Waggoner & Associates, calculated the numbers on that for him. He stated the drainage plan was actually shown on the drawing, he didn't even realize that until he went back and showed him. He said the swale on the west side of the berm would extend up to the northeast corner and redirect that water.

Mike Moesner asked if he thought that would correct the problem they are having.

James Fritts stated he didn't see why it wouldn't because it would take the water away from the east side of the berm and there would be less water running down through there. He said he could control the west side of the berm a lot easier but he couldn't control the neighbors putting stuff in the little ditch. He stated that makes it a little harder to maintain because he was sharing it with the neighbors.

Paul Keller asked if this was an issue until they built the subdivision to the north of him.

James Fritts stated the subdivision to the north of him was present prior to him purchasing the property.

Tami Stein said was it Noelle Mominee was she saying that correctly. She said she used to

Mrs. Barnhill stated yes, there is a Noelle Mominee.

Tami Stein stated the people she bought her house from built it. She said they lived there for 30 years. She stated when they started the Fall Creek Subdivision that backs the corner of her property; Noelle Mominee came out to work with them and the engineers. She said Mr. Koressel, who owned the house at the time, he had them come back two or three times in order to avert the water off the property. She stated she thought she had talked to her one time after she bought the property to make sure that things ... to make sure that it was in the process at that time. She said she thought there were two or three houses next to her at that time and now it was all completely done. She said she thought that was done correctly for the most part. She stated the Fall Creek property had a concrete berm that ran out into the street in their subdivision so it wouldn't come off on her side. She said her biggest fear was if he continued the berm, she thought it would just pool that water into the culvert there at the edge of her yard. She said when it rains then it would flood. She said that was her biggest fear. She stated she also had another concern. She said two years ago James called her one day and told her that he caught six people in a ring that was travelling the Vanderburgh and Warrick County storage unit facilities. She said they had broken into like 26 different facilities in the area and he had caught them in the middle of the night on his property and chased them through their subdivision. She stated she didn't feel like that was real safe to bring that kind of stuff. She said she knows that happens everywhere.

James Fritts stated he had them arrested.

Tami Stein stated she knew he did. She said that was kind of scary she didn't want these people out her back door trying to break in to stuff. She stated she knew that James and Tonya, she had always watched out for them. She said Kevin mowed beyond their property in that little gully out into James' property so he doesn't have to tip over with his big tractor. She said his dad or nephew mows for him. She stated they took care of one another, that was fine, that was the way life should be. She said if they bring those buildings up to their end, right now his units are five to six houses down from Mrs. Fields' and her, and already has had issues with people breaking in and chasing them through our subdivision. She stated they had a pretty nice subdivision with a lot of kids so that was another big concern of hers. She said when you get a retail place or a business place like that, things like that can happen and she didn't want them running through her yard.

Chairman Valiant stated you are on the north side of Mrs. Fields.

Tami Stein replied she was right next to her.

Chairman Valiant stated right (he was just looking at the map.) He asked if she was on the north side.

Tami Stein replied yes, there was a cul-de-sac there and she was on the cul-de-sac. She stated she should have made posters.

Terry Dayvolt asked her if the only drainage out of the cul-de-sac was through her yard.

Tami Stein said uhmm ahh no.

Terry Dayvolt asked where the cul-de-sac drained.

Kevin Blockner stated in the cul-de-sac that she lives at there are drains out there and there was a drain in Fall Creek Subdivision that takes that water off. He said they had a concrete drain there and a berm that keeps the water on their side. He showed a picture of the garden under water. He stated you could see with that berm the water had no choice to but back up on their property because it couldn't get out into the field. He said the little ditch that he made, it just filled up real quick and then it backs up. He said it was only there it didn't go all of the way out to the road like you would see in Evansville. He stated the street never floods just the backyard. He said it was a serious issue if you want a backyard in the springtime. He said he didn't build it in his backyard he built it in our backyard. He said he needed to fix the problem so he doesn't irritate all of his neighbors. He said he needed to fix it right, he needed to have an engineer come out and figure out how much water came off the property in a flash flood, and get rid of it instead of blocking it and putting concrete down where it can't soak into the ground anymore like it used to years ago. He said do you know what he was saying it had a field, it had a place to go and now they were containing it.

Mike Winge asked if all of the water coming down from the subdivision coming down through there as well when the subdivision in.

Kevin Blockner stated the subdivision on the north of them contained their water. He said their water was on the other side of the berm they built. He said it couldn't come over into their property.

Mike Winge said but there is no spillway.

Kevin Blockner stated it probably came into Mr. Fritts' property eventually somewhere because it had to go somewhere.

Mike Winge stated somebody was dumping water on him before he started building.

Kevin Blockner stated that field always had water it was an open field.

Tami Stein stated it was 13 acres they had formed whatever so when they had crops it was absorbed whenever it was just dirt...

Kevin Blockner stated but when you put concrete, rock, and buildings like you were building another subdivision which was fine but you need to come up with another solution for getting rid of the water. He said like all of the other subdivisions had to do.

Mike Winge stated he guessed what his question in looking at that his retention pond was the water running away from it...it is running towards it correct.

James Fritts stated the backyards in that part of Fall Creek were angled down and that was where the water you saw came from. He said it really boiled down to on the east side of the berm it needed to be cleaned up so that it would flow better. He stated by talking to Glen Merritt, the engineer, if he would run the swale up to the northeast corner and divert it to the west side of the berm then the water would get away from there anyway.

Mike Winge said looking at the diagram the retention pond was back from where they are.

James Fritts stated the retention pond was to the south.

Mike Winge stated he was trying to figure out why Mrs. Stein had so much of a problem there when it was supposed to be going to the retention pond.

Tami Stein stated the water was backing up.

Mike Winge stated so it was backing up. He said what he was trying to come up with before Mr. Fritts built there the water from this subdivision had to go somewhere and it was going into the field. He stated so they diverted it over into the field for a problem for somebody for later.

Kevin Blockner said it was all natural it had never been disturbed.

Mike Winge stated eventually all the land was going to be bothered in one way or another.

Kevin Blockner said you are right.

Mike Winge stated so someone else didn't do a long-term plan.

Doris Horn asked if that was 13 acres that he had there.

James Fritts stated it was a total of 13 acres to the north of the ditch. He said roughly six acres was undeveloped right now.

Mike Winge asked how long was the little swale been there that you were going take the berm through that you couldn't create a small amount to the opposite side to where it would allow the water to come back to the retention pond. He asked if that was a possibility.

James Fritts said what you are talking about would have to be on her property currently the way it was set up.

Mike Winge stated so it was low from that side.

James Fritts stated yes, it was low on her property and that was why he wanted to run the swale on up to capture that and run it down to the west side of the berm.

Mike Winge asked but technically, he wouldn't have to do that but he wanted to.

James Fritts stated technically all that would have to be done would be to go down through there and clean up the east side of the berm where the high spots are and if the neighbors could be controlled on putting their grass clippings and stuff in there it would be okay. He said it wasn't a gully washer through there it was a slow flow but if you block it the water would back up somewhere and right now the low spot was the northeast corner where her arbor trees and tomatoes are.

Mike Winge asked if his retention pond flooded or over flowed.

James Fritts replied no sir. He said what she was talking about with the beaver dam that was before he had owned the property and built. He said it was on the south side when the big storm happened on the southeast side of Evansville with the real bad flood. He stated he couldn't remember the exact date but he knew there was a beaver dam that was found before you cross the highway and he worked with Bobby Howard and the County helped clean up the ditch all of the way up to the Deaconess Hospital area to get that flowing again.

Terry Dayvolt stated your retention pond has not flooded and overflowed.

James Fritts stated no sir. He said not the one that she was talking about it was actually oversized. He said they tried to figure out what they would develop on the property. He stated they thought about condominiums in a six-acre area so they developed it like they would have streets and condominiums. He said so it was oversized from the very beginning.

Terry Dayvolt stated if you had some way to divert the water from the northeast corner to the west side of the berm that would help a whole lot probably.

James Fritts replied yes.

Mike Moesner asked if that was possible to do on his property or if he would have to go past his property to do the swale.

James Fritts replied a swale would be mostly on his property but it would have to touch Tami's property a little bit where the low spot was so he would have to disturb it there before you got to the trees.

Mike Moesner asked if he thought if he did that, it would solve the problem that she seems to be having.

James Fritts replied that was what Glen Merritt, with Cash Waggner & Associates thought. He said he let him run the drainage calculations. He said he was just an old country boy, you know water from high to low.

Mike Moesner stated it runs downhill always.

Mike Winge stated you said the yards are low in the back so are they getting any water running from their high part of the yards street side back through to.

Chairman Valiant stated he was talking about the subdivision Fall Creek.

James Fritts stated the Fall Creek Subdivision on the northern part of his property honestly the house was probably about five feet from where his property begins so it runs down because they are steep yards through there. He said he didn't know the exact dimensions but it was that way all of the way down through there.

Chairman Valiant asked if there was a berm on that end as well.

James Fritts replied yes, there was a berm on his northern side but there are cutouts through there so any water can flow through the cutouts.

Kevin Blockner stated there was an easement for Vectren because there were power lines that ran straight down to Deaconess Hospital and then they cut up through her yard with another easement and that was Vectren and the telephone company and they have buried lines in there so you won't cut much of anything in those easements. He said that was set and done and they have already buried all of the lines and Mr. Fritts wasn't going to come over there and cut because

they weren't going to let him and you aren't going to do anything on Vectren's easements which are under the big power lines. He said it would have to be all on Mr. Fritts to get rid of all of the water. He said Vectren, Indiana Bell, or whoever it was had their lines buried and they aren't going to let him dig. He said the digging was done through there. He said he could guarantee that because they won't let you build anything and they won't let you plant trees there in either direction.

Chairman Valiant stated all right Board here was where he was at with this; if Mr. Fritts does nothing else no problem solved they are going to have flooding correct. He asked if he was thinking right.

Mike Winge replied yes, but was the water his fault.

Chairman Valiant stated they weren't there to discuss that it wasn't their decision. He said if they didn't do anything Mrs. Stein would still have flooding. He stated Mr. Fritts was offering to do as much as he could do to help avert the situation correct.

Mr. Fritts replied yes.

Chairman Valiant stated he just wanted to make sure he was getting it correct because there were lot of people talking. He said that was where he was at with it because if we don't approve anything tonight...

Kevin Blockner stated he has offered to do things and he was sure he would but what he had done so far still hadn't taken care of the water.

Chairman Valiant stated like he said if the Board didn't do anything the problem would never improve.

Mike Winge stated Morrie he had a question for him. He asked if the work that he was doing and wanting to put these up would he be obligated.

Attorney Doll stated the Board could conditionally approve his Special Use. He said they would have to state what the conditions are and that was apparently the linking of a drain on the west side of the berm to the northeast corner of his property to try to take some of the water that presently goes down the east side of the berm to his retention pond.

Mike Winge asked Mr. Fritts if he was okay with that.

James Fritts replied to help with the slow drainage yes, which was what he intended to do anyway.

Chairman Valiant stated that Mr. Fritts wanted to solve the existing drainage problem. He said it wasn't really related to what Mr. Fritts wanted to do but if he wanted to do it that was his call.

Attorney Doll stated when you say natural flow are you talking about sheet draining across your property or are you going to dig an indentation on the west side of the berm that was going to go to the corner.

James Fritts said he would create swales to where it would go on the west side of his berm.

Attorney Doll stated so you are going to dig an indentation, a swale, on the west side of the berm to the northeast corner of your property to try to intercept some of the water. He said he didn't know if anybody had identified for sure where the water was coming from but if he had a berm, it wasn't coming from him. He stated it must be coming from out of their own subdivision if there was a berm on the north subdivision that keeps the water up there then the water must be coming from their own subdivision. He said that general area, if he recollects correctly the few times he had been in that subdivision area, it was very flat. He said nobody had said anything about where on the southern end of all of this where the water was going. He said he knew where Mr. Fritts' water was going he had a retention pond. He asked where their water was going on the southern end.

James Fritts stated there was a legal drain that ran east to west across the highway.

Attorney Doll stated the water goes east to west the water and ran into Vanderburgh County.

James Fritts replied into Vanderburgh County back into Warrick County and eventually into Pigeon Creek.

Attorney Doll stated if it goes into Pigeon Creek, it wasn't going anywhere. He said to answer Mike's question you could conditionally approve the Special Use as long as the applicant, Mr. Fritts, agrees to construct a swale on the west side of the berm to the northeast corner of this parcel of property to attempt to intercept and drain off some of the natural water that was accumulating there. He said he thought that language was descriptive but not over stating it.

Chairman Valiant stated they would need the engineers to design whatever how it would work.

Attorney Doll stated let him say this to Mr. Fritts; the Area Plan Commission instructed you when you built the first project there to build the berm. He said that was a condition of the approval of your project, to try to give some privacy to the subdivision behind your property from your commercial activity on your property. He stated this wasn't something that you willy nilly decided to do. He said he thought he remembered the night meeting when that was voted for. He said the berm was there because you were required to build the berm.

James Fritts replied yes, he wasn't looking to spend that extra money.

Attorney Doll stated yes, he got that. He said Mike in terms of a motion, a motion to approve subject to the condition that Mr. Fritts constructs a swale on the west side of the berm in accordance to his engineers recommendation to attempt to intercept the water at the northeast corner to take it into his detention facility would be the correct way to do that.

Mike Winge stated he would make that in the form of a motion but when we come to it, we would want that wording in there. He said Mr. Fritts he had a general question here on exhibit "A" what you are showing was water shed down to your retention pond across the top the north section in the 15' that your engineer had drawn.

James Fritts stated the way it would happen was they would basically break the property in half and water would flow both ways then. He said right now the water was flowing down to the east and after doing this; it would break and flow both ways.

Mike Winge said they are showing the Board that would be a water diversion up here down to the east side and around.

Mr. Fritts replied but it was inaudible.

Mike Winge said if you see the arrows, it shows the watershed on it. He said it was going across the north end of the property and Mr. Fritts and his attorney, Chris, just told him that it breaks half way on the north side and goes down through the property itself and the other half comes down the swale to the holding pond. He said it looked to him like he was trying. He stated now the swale stopped here (looking at exhibit "A").

Mr. Fritts replied yes the swale stopped there.

Mike Winge stated you are adding swale so that alleviates quite a bit of the water problem.

James Fritts stated (referring to exhibit "A") that's right, there was an underground drain that they would tie into their existing so when it would come down it would go into it .

Mike Winge stated what was wild was it was coming from the houses.

Chairman Valiant stated from what he understood they believe and his engineers believe this would actually make it better because it would capture some water that would otherwise get into that swale and keep it on his property down to the pond. He said in addition he was committed to do some additional work that he hoped would alleviate some of their issues but hopefully out of all of this it would get better. He said it certainly shouldn't get worse.

Terry Dayvolt asked how close this right here was, he knew it was her property there, and how close was this to the situation on where the water was. (Referring to exhibit "A")

James Fritts stated this right here was 60' from the water here and this was where Tami's property was and this was her neighbor's property. (Referring to exhibit "A")

Terry Dayvolt stated it would still have a swale on the east side of the berm.

James Fritts stated on the east side of the berm he wouldn't call it a swale it was more like a little trench or ditch.

Terry Dayvolt asked if his berm went all of the way back to there. (Referring to exhibit "A")

James Fritts replied no sir the berm stopped before they get to the property.

Terry Dayvolt stated you and her had agreed not take the berm any farther.

James Fritts stated if she didn't want the berm he had no desire to put it up.

Terry Dayvolt asked Tami Stein if she had asked him to stop the berm where he stopped it.

Tami Stein stated when he first approached them before he built anything he said he wasn't going to build anything on that end for a long time. She said she asked him if he had to bring the berm, all of the way down, she didn't want to obstruct her view of sunsets because they sat out back a lot at night. She stated he said no because he was going to plant pine trees on it and he had planted pine trees on top of the berms. She said she didn't want to obstruct her view from her backyard because they had a beautiful backyard.

Terry Dayvolt asked if she had requested him to stop the berm right there.

Attorney Doll stated knowing that he was going to build three buildings and have outside storage, that wasn't a sunset.

Tami Stein said they're right she agreed.

Attorney Doll stated the APC specifically approved the zoning for this project conditioned upon a berm being put behind the improvements. He said to establish privacy.

Chris Wischer said that was on the "C-3"; just so he was clear, not on the Special Use.

Attorney Doll stated no it was on the "C-3".

Chris Wischer when he builds these that condition from that ...

Attorney Doll stated that would be applicable, Chris.

Chris Wischer asked if it was a UDC or was it a condition on the zoning.

Attorney Doll replied he thought it was a condition on the zoning but it had a been long time. He said he thought there were remonstrators there who were concerned about this commercial property abutting up behind the subdivision. He said the subdivision was older and had been there a while.

Chris Wischer stated he guessed what you were getting at he may be obligated to build the berm by that reason.

Attorney Doll stated at the very least he would have to get a clarification from the APC that he could escape that. He said if the neighbors were telling him that they didn't want him to build a four-foot berm and plant trees on it. He stated it would seem to him if he would divert the water to the west side of the berm that berm also served as a drainage purpose to keep that water from wandering back to the east as it goes south off of the property. He said he thought that would be a separate issue that would have to be discussed with APC before he started building buildings but maybe the neighbors had changed their mind about whether they wanted a berm or didn't want a berm once buildings start to go up there and sunsets don't go down there anymore. He said he was just pointing out as his recollection for the council for the APC when that was approved.

Chris Wischer asked if the berm requirement was on the zoning he might not be able to get away from it without going back through the zoning process to get rid of the requirement.

Attorney Doll replied yes or to give it an exception.

Chris Wischer stated if the berm on the prior Special Use, which we don't think it, was.

Attorney Doll stated he didn't think it was the Special Use. He said he thought it was the APC that required it.

Chairman Valiant replied they would look into that.

Attorney Doll stated that wasn't an issue for tonight to be decided. He said that was irrelevant to the issue before the BZA. He said the BZA was to approve the Special Use for the outside storage. He stated if so although he wasn't obligated he made an offer and he had described how that would be incorporated into a conditional approval if the Board chose to do so.

Mike Moesner stated you are telling us if he didn't have the outside storage he would go ahead and do what he wanted to do.

Attorney Doll stated no, he wasn't saying that.

Mike Moesner stated he misunderstood, he thought the Special Use was for the outside storage.

Chris Wischer stated Morrie wasn't it true though if he wasn't going to have the outside storage on this part of the property.

Attorney Doll stated then he wouldn't be there tonight.

Chris Wischer stated he was zoned "C-3" and he could go through the site review, the drainage review, and the building permits for these buildings and roads without coming to this Board.

Attorney Doll stated he agreed.

Chris Wischer stated which he had pretty well done.

Attorney Doll stated the only reason he was there was outside storage.

Chris Wischer stated that was correct. He said which probably didn't contribute as much as a building would.

Attorney Doll stated he was talking about roofing part of it and things of that sort that may contribute to some of this.

Chairman Valiant stated but what he proposed to look at and have his engineer look at it would be to help the neighbor.

Tami Stein said she didn't understand all of this really but if he already had permission to build the buildings there why were they contacted. She asked if he could tell her that.

Attorney Doll stated it was because he was trying to do something different than build a building. He said he wanted to have outside storage of boats and RV's. He stated in our government in Warrick County it was required that a property owner must acquire a Special Use to operate an outside storage unit. He said that was what Mr. Fritts was here for. He stated he wanted the Special Use to be able to do that.

Tami Stein asked if it was just an amendment to the original request to build his whole facility from five, six, or seven years ago.

Attorney Doll stated it was a layered privilege. He said it was rezoned and could be used as a "C-3" property.

Tami Stein stated so you could say no more forever.

Attorney Doll stated no the Board couldn't unzone it. He said if he wanted to use outside storage on a "C-3" parcel of property he would have to come in and apply for this Special Use, which was what he had done.

Tami Stein replied okay.

After ascertaining there were, no more remonstrators or questions from the Board Chairman Valiant called for a motion.

I, Mike Winge, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.

2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to the outside storage being enclosed with a six-foot high solid wall or opaque fence.
4. Subject to an Improvement Location Permit being issued.
5. Subject to any required Building Permit. (State or Local)
6. Subject to Drainage Plan approval and security being posted to cover cost of construction or work, being completed prior to any Improvement Location Permits being issued.
7. Subject to them abiding by their commitment with the landscaping (berm and trees) as in place on Lot 2A.
8. That the applicant and owner agreed to in conjunction with his engineer's recommendation to construct a swale on the west side of the berm and trees proceeding to the northeast corner of the property to gather surface water at that

location from the rear of the subdivision to his east to be captured in his retention facility on the southern part of his property.

The motion was seconded by Doris Horn was approved unanimously except with one abstention by Jeff Willis.

BZA-SU-18-19

OWNER & APPLICANT: American Land Holdings of Indiana LLC by Chad Sullivan, Attorney

PREMISES AFFECTED: 2853 located on the S side of Holder Hill Rd. approximately 0 feet SW of the intersection formed by Holder Hill Rd. and Weyerbacher Rd. Hart, Greer, Campbell, and Boon Townships.

NATURE OF CASE: Applicant requests a Special Use, SU-13, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow Mineral extraction in a Flood Hazard area as adopted by ordinance effective August 2, 2012. (Advertised in the Standard September 13, 2018).

Attorney Doll asked if Chad Sullivan was present. He said Mr. Sullivan, with Jackson Kelly Law Firm, represents American Land Holdings of Indiana LLC. He stated Monday a week ago today, Mr. Hendrickson filed a very detailed 30-page objection to this application. He stated his council was Mark Miller, with the law firm of Danks and Danks. He said he had spoken with Mr. Miller and Mr. Sullivan and first of all, until Friday American Land Holdings of Indiana LLC was not provided with a copy of the objection that had been filed so they were unaware of the objection. He stated today Mr. Sullivan, much like Liberty Mine, on behalf of the property owner pursuant to our rule 3.8 of the rules of the BZA in writing requested to continue the application until the October 22, 2018 BZA hearing in this room at 6:00 p.m. He said as a property owner they are entitled to do that but it would take a motion by the Board to approve that request. He said second the continuation would have to be voted upon. He stated the only thing he would say was if the people in the audience were interested in the American Land Holdings, application for mining the State Legislature had taken the regulatory authority away from counties to regulate mining except for two circumstances. He said one was if the mine operation was going to be within a so-called urban area. He stated an urban area was defined by the General Assembly as eight houses within a quarter of a mile distance of the mine site. He stated or two if the mine site was going to impact a flood plain. He said the only reason American Land Holdings has to come before the Board of Zoning Appeals requesting the Special Use to mine in Warrick County was that a small section of this, whatever the acreage was, a small portion of this was in a flood plain. He said Mr. Hendrickson had filed an objection and that would be whenever this was heard. He said there was also the possibility, because of the amount of time hearing complicated applications and objections take, that the Board may in fact set this for a Special Meeting at a time other than the ordinary meeting time of 6:00 p.m. on the fourth Monday of each month. He stated if they knew that an application and objection was going to take hours to hear then they don't start at 6:00 p.m. the Board had learned that the hard

way leaving here one morning at 4:00 a.m. and they weren't doing that anymore. He said as a consequence of that what had been asked of the Board by American Land Holdings by their legal counsel in writing today was that the Board would continue their application SU-18-19 to the next regularly scheduled meeting in October, which was the 27th at 6:00 p.m. in this room. He said what he was telling them was they might come in at that point in time and ask for it to be set for a Special Meeting during daylight hours when the Board wouldn't be there until midnight. He stated they were seeing that happen with mining activities and mining applications. He said they just can't seem to get things worked out. He stated Mr. Chairman that was the status of this. He said there was a question in the audience, probably a procedural question; he didn't know if the Chair wanted to recognize them.

Chairman Valiant asked them to come to the podium to state their name and sign in.

Ron Nelson stated they were actually there with safer homes they were there for support of that.

Attorney Doll asked why didn't you tell him and he could have saved having to say all of that.

Ron Nelson stated if that took an hour and fifteen minutes he couldn't imagine the time frame the October 22, 2018 meeting would take because this was probably just a fraction of the people that would show. He said they were there to support the other one but they didn't know it was taken off of the agenda. He said so they got to listen to the ditch/bank for an hour and fifteen minutes and learned a lot.

Attorney Doll asked if they were there in favor of the Liberty Mine.

Ron Nelson replied no, they were the ones fighting Liberty Mine with the City of Boonville. He said they were with Save Our Homes LLC.

Attorney Doll asked if they had legal representation.

Ron Nelson replied yes, Mr. Phillips.

Attorney Doll said Mr. Phillips was part of the group of lawyers that agreed to continue tonight's hearing.

Ron Nelson replied they understood that. He said they were there to support the Elberfeld deal.

Attorney Doll said okay. He stated although you are interested in Liberty Mine you were there giving moral support.

Ron Nelson stated they had been in contact with in regards to some things.

Attorney Doll asked if there was anyone there who dealt with the American Land Holdings application. He said all of you are there about Liberty Mine. He stated we live to fight again. He said in our beautiful meeting room.

Chairman Valiant asked if he could state his name if he missed it he was sorry.

Ron Nelson stated his name was Ron Nelson.

Chairman Valiant stated with everything that Morrie had said did anyone want to make a motion.

Paul Keller made a motion to continue BZA-SU-18-19 to the next regularly scheduled meeting of October 22, 2018 at 6:00 p.m. The motion was seconded by Mike Winge and unanimously carried.

Mike Moesner asked if that meant unless they heard different it would be at...

Attorney Doll stated this was filed to be heard at the July meeting and that didn't happen, well Liberty was supposed to be heard, then August, then September, and now October. He said it seemed like there was a pattern to these that are set for regular meetings, Liberty is more complicated to be fair. He said there was a pending lawsuit.

Ron Nelson said correct, they did meet today and they did meet two weeks ago. He stated there was progress. He said he thought that were some of the things they were trying to work out with the lawsuit pending and everything else.

Attorney Doll stated to answer your question it is a regular meeting. He said they might stand up at the regular meeting and say they thought this could take hours and Peabody Energy Inc. and American Land Holdings thought this would take hours and if so they might in October ask them to schedule a special daytime meeting to hear their application as well.

ATTORNEY BUSINESS: None

Mike Winge stated he had a question before they go any further. He said there might come a time with all of these continuations that we say that if they don't get something together with this thing.

Attorney Doll stated that was correct. He said what he prayed to God was they don't have the Liberty Mine application and the American Land Holdings application on the same night. He said he didn't think they could do that.

Chairman Valiant stated they would need some more chairs.

Attorney Doll stated as you could see you have caught the County in a situation where they are spending some much needed maintenance and repair dollars on this building to restore and save it. He said that didn't make it the safest and best environment to hold a public hearing. He stated they had lost half of their seating for scaffolding and pipe fitters.

EXECUTIVE DIRECTOR BUSINESS: None

Doris Horn made a motion to adjourn the meeting at 7:20 p.m. The second was made by Terry Dayvolt and passed unanimously.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held September 24, 2018.

Molly Barnhill, Assistant Director